

107TH CONGRESS
1ST SESSION

H. R. 3105

To amend the Internal Revenue Code of 1986 to allow amounts elected for reimbursement of medical care expenses under a health flexible spending arrangement, as defined in Code Section 106(c)(2) and the regulations promulgated under Section 125, that are unused during a Plan Year to be carried over within the account to subsequent plan years for the reimbursement of future eligible medical expenses.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 11, 2001

Mr. ROYCE introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow amounts elected for reimbursement of medical care expenses under a health flexible spending arrangement, as defined in Code Section 106(c)(2) and the regulations promulgated under Section 125, that are unused during a Plan Year to be carried over within the account to subsequent plan years for the reimbursement of future eligible medical expenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. CARRYOVER OF UNUSED BENEFITS FROM**
 2 **HEALTH FLEXIBLE SPENDING ARRANGE-**
 3 **MENTS.**

4 (a) IN GENERAL.—Section 125 of the Internal Rev-
 5 enue Code of 1986 (relating to cafeteria plans) is amended
 6 by redesignating subsections (h) and (i) as subsections (i)
 7 and (j), respectively, and by inserting after subsection (g)
 8 the following new subsection:

9 “(h) ALLOWANCE OF CARRYOVERS OF UNUSED
 10 FUNDS TO SUBSEQUENT TAXABLE YEARS.—

11 “(1) IN GENERAL.—For purposes of this title—

12 “(A) a plan or other arrangement shall not
 13 fail to be treated as a cafeteria plan or health
 14 flexible spending arrangement, and

15 “(B) no amount shall be required to be in-
 16 cluded in gross income by reason of this section
 17 or any other provision of this chapter,

18 solely because under such plan or other arrangement
 19 any amounts elected for reimbursement of eligible
 20 medical care expenses under a health flexible spend-
 21 ing arrangement which are unused during a plan
 22 year may be carried forward to one or more suc-
 23 ceeding plan years.

24 “(2) AMOUNTS INCLUDED IN GROSS INCOME.—

25 Any carryover amount described in subsection (h)(1)
 26 shall be included in gross income for purposes of

1 Federal withholding and employment tax purposes,
2 including FICA taxes. Any amount carried over
3 under this subparagraph shall be treated as wages
4 for the taxable year in which the amounts were de-
5 termined to be carry over amounts as described in
6 subsection (h)(1).

7 “(3) TREATMENT OF AND LIMITATION ON
8 ROLLOVER AMOUNTS.—Amounts carried over under
9 subparagraph (h)(1) shall be limited as follows:

10 “(A) Amounts carried forward pursuant to
11 subsection (h)(1) shall be limited to \$2,000 per
12 plan year (as indexed for future years by the
13 cost of living adjustment determined under sec-
14 tion 1(f)(3)). Any unused amounts during any
15 plan year in excess of this amount shall be for-
16 feited and shall be treated in accordance with
17 the applicable regulations issued under section
18 125.

19 “(B) Amounts carried forward pursuant to
20 subsection (h)(1) shall be used only for reim-
21 bursement of Qualified Medical Care Expenses
22 defined in subsection (h)(5) below.

23 “(C) The employer may invest such carry-
24 over amounts in guaranteed principle and inter-

1 est investments which provide 100 percent li-
2 quidity within the account.

3 “(4) FORFEITURES FOR TERMINATING PARTICI-
4 PANTS PERMITTED.—Nothing in this subsection
5 shall preclude the application of the requirement set
6 forth in the regulations promulgated under section
7 125 that participants who terminate participation
8 prior to the end of the plan year must forfeit any
9 health flexible spending arrangement account bal-
10 ance provided such amounts do not consist of carry
11 over amounts described in subsection (h)(1).

12 “(5) QUALIFIED MEDICAL EXPENSES.—

13 “(A) IN GENERAL.—The term ‘qualified
14 medical expenses’ means, with respect to sub-
15 section (h)(3) above, amounts paid for medical
16 care (as defined in section 213(d)) for such in-
17 dividual, the spouse of such individual, and any
18 dependent (as defined in section 152) of such
19 individual, but only to the extent such amounts
20 are not compensated for by insurance or other-
21 wise.

22 “(B) HEALTH INSURANCE EXPENSES.—

23 “(i) IN GENERAL.—Subparagraph (A)
24 shall not apply to any payment for cov-
25 erage under a group health plan of an em-

1 ployer of the health flexible spending ar-
2 rangement participant or the spouse of the
3 participant.

4 “(ii) EXCEPTIONS.—Clause (A) shall
5 not apply to any expense for coverage
6 under—

7 “(I) a group health plan during
8 any period of continuation coverage
9 required under any Federal law,

10 “(II) a qualified long-term care
11 insurance contract (as defined in sec-
12 tion 7702B(b)),

13 “(III) a Medicare supplemental
14 policy under section 1882 of the So-
15 cial Security Act, or

16 “(IV) an individual health insur-
17 ance policy.

18 “(6) CARRYOVER AMOUNTS TO BE EXPENDED
19 AFTER HEALTH FLEXIBLE SPENDING ARRANGEMENT
20 CONTRIBUTION.—All Qualified Medical Care Ex-
21 penses defined in subsection (h)(5)(A) that are sub-
22 mitted for reimbursement must be reimbursed first
23 from amounts in the participant’s health care flexi-
24 ble spending arrangement that do not constitute car-
25 ryover amounts described in subsection (h)(1), to the

1 extent such amounts may be reimbursed from the
2 portion of the health flexible spending arrangement
3 that does not consist of carryover amounts pursuant
4 to rules set forth in the regulations promulgated
5 under section 125 relative to health flexible spending
6 arrangements.

7 “(7) TREATMENT OF CARRYOVER AMOUNTS
8 FOLLOWING TERMINATION OF EMPLOYMENT OR
9 OTHER LOSS OF ELIGIBILITY.—Upon a termination
10 of employment or other loss of eligibility under the
11 health care flexible spending arrangement, the Em-
12 ployer must provide for one or more of the following
13 methods of distribution of a Participant’s accumu-
14 lated carryover amount plus interest earned and al-
15 located to such Participant pursuant to subsection
16 (h)(3)(C):

17 “(A) The Participant’s accumulated carry-
18 over amount, including any interest earned and
19 allocated to such health care spending arrange-
20 ment balance pursuant to (h)(3)(C), may be re-
21 tained by the Employer to be used to reimburse
22 Qualifying Medical Care Expenses of the former
23 participant and the former employee’s spouse or
24 dependents incurred after the date of termi-
25 nation;

1 “(B) The carryover amount calculated as
2 of the day of the termination of employment or
3 other loss of eligibility may be transferred to
4 the subsequent employer to be used by the
5 former participant in a manner consistent with
6 the rule of this subsection (h), provided the
7 subsequent employer provides a similar ar-
8 rangement and agrees in writing; or

9 “(C) The employer may distribute the car-
10 ryover amount, including any interest earned
11 and allocated to such account pursuant to sub-
12 section (h)(3)(C), to any appropriate vehicle as
13 defined by the Department of Treasury in regu-
14 lations or to the participant in cash. If carry-
15 over amounts are received in cash, the interest
16 earned and allocated to such participant pursu-
17 ant to subsection (h)(3)(C) shall be treated as
18 ordinary income for purposes of Federal tax
19 purposes.

20 The employer must offer at least one of the options
21 set forth above; however, nothing in this subsection
22 requires the employer to offer more than one option.
23 If the employer offers more than one of the options
24 listed above, the employee must choose the applica-
25 ble option within 60 days of the date of termination

1 of employment or loss of eligibility. Should no elec-
2 tion be made, the funds will revert to the employer
3 consistent with Federal regulations. If the termi-
4 nation of employment or loss of eligibility is a result
5 of the participant's death, the surviving spouse, or
6 dependents, if no surviving spouse, will receive the
7 participant's carry over funds in a manner con-
8 sistent with (h)(7)(C).”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 December 31, 2001.

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